

STATE OF MICHIGAN
COURT OF APPEALS

In re TROY, Minors.

UNPUBLISHED
October 23, 2014

No. 320979
Macomb Circuit Court
Family Division
LC Nos. 2013-000047-NA
2013-000048-NA

Before: FITZGERALD, P.J., and WILDER and OWENS, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating his parental rights to his children under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

“In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met.” *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). “We review the trial court’s determination for clear error.” *Id.* “A finding is ‘clearly erroneous’ if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made.” *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

In this case, the trial court properly terminated respondent’s parental rights under MCL 712A.19b(3)(c)(i) and (g) because the conditions leading to adjudication continued to exist, and respondent could not provide proper care of his daughters. At the time of the adjudication respondent had been arrested on an outstanding warrant due to a conviction of larceny from a building. Respondent’s house was dirty and he had substance abuse issues. Respondent did not address his substance abuse issues throughout the time the children were in foster care. Although respondent admitted using heroin in December 2012, he did not begin using cocaine until 2013 when the children were already in protective care. Respondent relapsed in March 2013 and May 2013. By the summer of 2013 respondent was terminated from Substance Abuse Support Services (SASS) because he had stopped attending in April 2013. When he was finally assessed by Community Corrections they recommended inpatient treatment. By the time of the permanent custody hearing, respondent had not begun any sort of treatment. Respondent testified that the only time he went to rehab was in 2008 but, since he admitted continued drug use, he never sufficiently addressed his problem. At the permanent custody hearing respondent

admitted being an addict. He had never demonstrated an ability to maintain a substance free lifestyle.

Respondent argues that he benefited from and made progress on his treatment plan and addressed the conditions that existed at the time of the adjudication. This claim is unsupported by the trial court's record. Aside from failing to address substance abuse, respondent's situation worsened while the children were in the court's temporary custody, demonstrating his inability to provide proper care for them. Respondent was laid off and did not again obtain employment. There was also no evidence that respondent addressed his mental health issues. He acknowledged having depression, and the evidence showed that he was diagnosed with PTSD but failed to treat it by obtaining prescribed medication. Further, respondent failed to visit the children throughout the time that they were in protective care. He stopped visiting them because he was afraid he would be arrested on an outstanding warrant after he absconded from probation. At the time of the termination hearing, respondent was in jail for the probation violation.

Respondent argues that he could achieve proper care and custody through placement with relatives and he believed his family would help him with child care. Respondent's claim is unpersuasive. The record does not reveal that anyone in respondent's family was available or willing to help him with the children. Throughout the 13 months the children were in care, no one in respondent's family came forward to help him. Respondent had no firm plan for the children. There was no evidence he could meet their physical, financial, or emotional needs. Given respondent's failure to address his substance abuse issues, homelessness, and joblessness, termination of parental rights was proper under MCL 712A.19b(3)(c)(i) and (g).

Respondent argues that termination of his parental rights was improper under MCL 712A.19b(3)(j) because the trial court acknowledged respondent would not intentionally harm his children. However, this statutory subsection does not refer to intentional harm as respondent suggests. Given respondent's criminal history, failure to cooperate with probation, and unaddressed substance abuse, the children would be at risk of harm if returned to his care. Thus, termination of his parental rights was proper under MCL 712A.19b(3)(j).

Respondent also argues that termination of his parental rights was not in the children's best interests. "Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012); MCL 712A.19b(5). "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). We review a trial court's finding that termination is in the child's best interests for clear error. *HRC*, 286 Mich App at 459.

Based on a review of the record as a whole, the trial court properly found that termination of respondent's parental rights was in the children's best interests. There was no evidence that respondent could provide a safe and stable home and a drug-free environment for his children. Moreover, given that both of the children acted out sexually, they needed extra care and attention. Although the girls received biweekly mental health treatment, they needed emotional support that respondent failed to provide. Moreover, there was no evidence of a bond between respondent and either of the girls. Despite his claim otherwise, the evidence showed that neither

of them ever asked about respondent. Thus, the trial court did not err in its best-interest determination.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Kurtis T. Wilder

/s/ Donald S. Owens